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EXAMINER
FRISBY, KESHA

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/807,972	ONDRUSZ ET AL.
Office Action Summary	Examiner	Art Unit	
	KESHA FRISBY	3715	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 October 2008</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>45-55</u> is/are pending in the application.

    4a) Of the above claim(s) <u>1-44</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>45-55</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

10/7/2008 has been entered.

Status of Claims

After the request for continued examination was filed on 10/7/2008, claims 45-55

are pending.

Specification

2.   The specification is objected to as failing to provide proper antecedent basis for

the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

of the following is required: Claim 45 lacks antecedent basis for "the level at which

he/she competes" and "the relevant sport".

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3. Claim 45-49, 51, 52, 54 & 55 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Gordon et al. (U.S. Publication Number 2003/0027688) in view

of Petrus (U.S. Patent Number 7.136.820) and Yoo (U.S. Publication Number

2003/0027688).

Referring to claim 45, Gordon et al. discloses first computer means for processing data

(computer 110); wherein: each sports person using the system inputs a selection of a

sport (paragraph 0016) and, in response to enquiries generated by the first computer

means, information concerning his/her physiological profile (paragraph 0015) and from

this comparison formulates a training regime which is relayed to the sports person

(generating a customized exercise program). *Gordon et al. does not disclose which has*

a database which stores for each of plurality of sports a record of an idealized

physiological profile, wherein: each sports person using the system enters information

to indicate the level at which he/she competes, from which the first computer means

determines for the relevant sport an idealized physiological profile of the sports person's

nominal peers; and the first computer means compares the physiological profile input by

each sports person with the idealized physiological profile of the sport's person's

nominal peers and from this comparison formulates a training regime which is relayed to

the sports person. Gordon et al. does disclose a database for storing measurements

and setting up a profile for each user (paragraph 0013), can be related to a sport person

(abstract) and a customized exercise program may include a nutrition program portion

(paragraph 0080). However, Petrus teaches having a database which stores for each

of a plurality of health profiles a record of an idealized physiological profile (a health

profile for a person of the consumer's age and health history background) and

compares the physiological profile input by each person with the idealized physiological

profile (abstract). It would have been obvious to one of ordinary skill in the art at the

time the invention was made to include storing ideal health profiles and having the

ability to compare a person's health information to an ideal health profile, as disclosed

by Petrus, incorporated into Gordon et al. so that an individual will be able to determine

their nutritional needs in comparison to an ideal healthy person/profile. Basically, the

individual is able to determine the nutritional needs needed to become more like the

ideal healthy person/profile. *Gordon et al./Petrus does not teach each sports person*

using the system enters information to indicate the level at which he/she competes,

from which the first computer means determines for the relevant sport an idealized

physiological profile of the sports person's nominal peers; and the first computer means

compares the physiological profile input by each sports person with the idealized

physiological profile of the sport's person's nominal peers and from this comparison

formulates a training regime which is relayed to the sports person. However, Yoo

teaches each sports person using the system enters information to indicate the level at

which he/she competes (Fig. 1: Expert training, Physical strength improvement, Fatness

Management and/or Exercise Beginner & paragraphs 0013 & 0046), from which the first

computer means determines for the relevant sport an idealized physiological profile of

the sports person's nominal peers (Figs. 1 & 2: target heart rate for a specific age group

& paragraph 0032: the target zone); and the first computer means compares the

physiological profile input by each sports person with the idealized physiological profile

of the sport's person's nominal peers and from this comparison formulates a training

regime which is relayed to the sports person (paragraphs 0012, 0019, 0033 & 0046). It

would have been obvious to one of ordinary skill in the art at the time the invention was

made to include the specifics of the sports person, as disclosed by Yoo, incorporated

into Gordon et al./Petrus in order to control the exercise apparatus.

Referring to claim 46, Gordon et al., as modified by Petrus, discloses wherein: the first

computer is connected via a telecommunications network to a plurality of remotely

located computer means (Fig. 1 & the associated text of Gordon et al.); and each sports

person uses one of the plurality of remotely located computer means to input data to the

first computer means via the telecommunications network (paragraph 0013 of Gordon et

al.) and to receive enquiries (computer 110 of Gordon et al.) and the formulated training

regime from the first computer means via the telecommunications network (computer

110 & generated customized exercise program of Gordon et al.).

Referring to claim 47, Gordon et al., as modified by Petrus, discloses wherein: the first

computer means for each sports person scales the stored idealized physiological profile

for the selected sport having regard to the weight of the sports person and compares

the input physiological profile with the scaled identical physiological profile when

formulating the training regime (paragraphs 0014 & 0080-0082 of Gordon et al.).

Referring to claim 48, Gordon et al. discloses wherein: the first computer means for

each sports person scales the stored idealized physiological

profile for the selected sport having regard to the gender of the sports person and

compares the input physiological profile with the scaled idealized physiological profile

when formulating the training regime (paragraph 0015 of Gordon et al.).

Referring to claim 49, Gordon et al., as modified by Petrus, discloses wherein: the first

computer means for each sports person scales the stored idealized physiological profile

for the selected sport having regard to the age of the sports person and compares the

input physiological profile with the scaled idealized physiological profile when

formulating the training regime (paragraph 0015 of Gordon et al.).

Referring to claim 51, Gordon et al., as modified by Petrus, discloses wherein: the

training regime formulated by the first computer means comprises recommendations for

training session frequency (paragraph 0019 of Gordon et al.).

Referring to claim 52, Gordon et al., as modified by Petrus, discloses wherein: the

training regime formulated by the first computer means comprises recommendations for

heart rate during training (paragraph 0018 of Gordon et al.).

Referring to claim 53, Gordon et al., as modified by Petrus, discloses wherein: each

sports person inputs periodically, in response to enquiries generated by the first

computer means, data to establish a psychological profile for the sports person

(paragraph 0015 of Gordon et al.); and the first computer means compares each input

psychological profile for each sports person with a stored base psychological profile for

the sports person (abstract of Petrus) and dependent on the comparison can modify the

training regime formulated by the first computer means (paragraph 0019 of Gordon et

al.).

Referring to claim 54, Gordon et al. discloses storing a database for each of a plurality

of levels of ability (paragraphs 0077-0079); first computer means for processing data

(computer 110); wherein: each sports person using the system inputs a selection of a

sport (paragraph 0016) and, in response to enquiries generated by the first computer

means, information concerning his/her physiological profile (paragraph 0015) and from

this comparison formulates a training regime which is relayed to the sports person

(generating a customized exercise program). *Gordon et al. does not disclose which has*

a database which stores for each of plurality of sports a record of an idealized

physiological profile, wherein: each sports person using the system enters information

to indicate the level at which he/she competes, from which the first computer means

determines for the relevant sport an idealized physiological profile of the sports person's

nominal peers; and the first computer means compares the physiological profile input by

each sports person with the idealized physiological profile of the sport's person's

nominal peers and from this comparison formulates a training regime which is relayed to

the sports person. Gordon et al. does disclose a database for storing measurements

and setting up a profile for each user (paragraph 0013), can be related to a sport person

(abstract) and a customized exercise program may include a nutrition program portion

(paragraph 0080). However, Petrus teaches having a database which stores for each

of a plurality of health profiles a record of an idealized physiological profile (a health

profile for a person of the consumer's age and health history background) and

compares the physiological profile input by each person with the idealized physiological

profile (abstract). It would have been obvious to one of ordinary skill in the art at the

time the invention was made to include storing ideal health profiles and having the

ability to compare a person's health information to an ideal health profile, as disclosed

by Petrus, incorporated into Gordon et al. so that an individual will be able to determine their nutritional needs in comparison to an ideal healthy person/profile. Basically, the individual is able to determine the nutritional needs needed to become more like the ideal healthy person/profile. *Gordon et al./Petrus does not teach each sports person using the system enters information to indicate the level at which he/she competes, from which the first computer means determines for the relevant sport an idealized physiological profile of the sports person's nominal peers; and the first computer means compares the physiological profile input by each sports person with the idealized physiological profile of the sport's person's nominal peers and from this comparison formulates a training regime which is relayed to the sports person.* However, Yoo teaches each sports person using the system enters information to indicate the level at which he/she competes (Fig. 1: Expert training, Physical strength improvement, Fatness Management and/or Exercise Beginner & paragraphs 0013 & 0046), from which the first computer means determines for the relevant sport an idealized physiological profile of the sports person's nominal peers (Figs. 1 & 2: target heart rate for a specific age group & paragraph 0032: the target zone); and the first computer means compares the physiological profile input by each sports person with the idealized physiological profile of the sport's person's nominal peers and from this comparison formulates a training regime which is relayed to the sports person (paragraphs 0012, 0019, 0033 & 0046). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the specifics of the sports person, as disclosed by Yoo, incorporated into Gordon et al./Petrus in order to control the exercise apparatus.

Referring to claim 55, Gordon et al. discloses storing a database for each of a plurality

of levels of ability (paragraphs 0077-0079); first computer means for processing data

(computer 110); wherein each sports person using the system inputs, in response to

enquiries generated by the first computer means, information concerning his/her

physiological profile (paragraph 0015); each sports person using the system can vary

the pre-programmed physiological profile for the relevant sport at the level at which the

sports person competes by inputting a target or targets selected from options provided

by the first computer means (paragraphs 0022-0050); and from this comparison

formulates a training regime which is relayed to the sports person (generating a

customized exercise program). *Gordon et al. does not disclose which has a database*

which stores a record of a pre-programmed physiological profile for each of the plurality

of sports for each of a plurality of levels of ability, inputting information of the level at

which he/she competes and the first computer means compares the physiological

profile input by each sports person with the varied physiological profile selected by the

sports person. Gordon et al. does disclose a database for storing measurements and

setting up a profile for each user (paragraph 0013), can be related to a sport person

(abstract) and a customized exercise program may include a nutrition program portion

(paragraph 0080). However, Petrus teaches having a database which stores a record

of a pre-programmed physiological profile (a health profile for a person of the

consumer's age and health history background) and compares the physiological profile

input by each person with the varied physiological profile selected by the individual

(abstract). It would have been obvious to one of ordinary skill in the art at the time the

invention was made to include storing ideal health profiles and having the ability to compare a person's health information to an ideal health profile, as disclosed by Petrus, incorporated into Gordon et al. so that an individual will be able to determine their nutritional needs in comparison to a pre-programmed healthy person/profile. Basically, the individual is able to determine the nutritional needs needed to become more like pre-programmed healthy person/profile. *Gordon et al./Petrus does not teach inputting information of the level at which he/she competes.* However, Yoo teaches each sports person using the system enters information to indicate the level at which he/she competes (Fig. 1: Expert training, Physical strength improvement, Fatness Management and/or Exercise Beginner & paragraphs 0013 & 0046) It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the specifics of the sports person, as disclosed by Yoo, incorporated into Gordon et al./Petrus in order to control the exercise apparatus.

3.   **Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al./Petrus/Yoo and further in view of Blau et al. (U.S. Patent Number 6,176,241).**

Referring to claim 50, Gordon et al./Petrus/Yoo discloses a system as claimed in claim 45. *Gordon et al./Petrus/Yoo does not wherein: each stored record o fan idealized physiological profile comprises measurements taken from the set of: maximum capacity to transport oxygen to tissues; percentage of maximum oxygen transport capacity that may be maintained without accumulation of lactate; greatest weight that can be lifted once; maximum power; maximum number of sit-ups performed without rest; maximum*

number of push-ups performed without rest; maximum number of crunches performed

without rest; and local muscle endurance; and the first computer means generates

enquiries relayed to the sports person which require data matching the measurements

stored for the idealized physiological profile. However, Blau et al. teaches wherein:

each stored record of an idealized physiological profile comprises measurements taken

from the set of: maximum capacity to transport oxygen to tissues (VO_2max); percentage

of maximum oxygen transport capacity that may be maintained without accumulation of

lactate; greatest weight that can be lifted once; maximum power; maximum number of

sit-ups performed without rest; maximum number of push-ups performed without rest;

maximum number of crunches performed without rest; and local muscle endurance; and

the first computer means generates enquiries relayed to the sports person which require

data matching the measurements stored for the idealized physiological profile. It would

have been obvious to one of ordinary skill in the art at the time the invention was made

to include the measurements, as disclosed by Blau et al., incorporated into Gordon et

al./Petrus/Yoo in order to formulate exercise regimens based on these measurements.

Response to Arguments

4.   Applicant's arguments with respect to claims 45-55 have been considered but are

moot in view of the new ground(s) of rejection.

Citation of Pertinent Prior Art

6. The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

French et al. (U.S. Publication Number 2003/0077556) teaches an education system challenging a subject's physiological and kinesthetic systems to synergistically enhance cognitive function.

Holland (U.S. Patent Number 6,607,483) teaches a method and apparatus for health and fitness feedback.

Thomas (U.S. Publication Number 2003/0013072) teaches a processor adjustable exercise apparatus.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KESHA FRISBY whose telephone number is (571)272-8774. The examiner can normally be reached on Monday-Friday 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/XUAN M. THAI/
Supervisory Patent Examiner, Art Unit 3715

/K. F./
Examiner, Art Unit 3715